IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1557 OF 2004

Balasaheb Bhimrao Pekhale & Ors. ...Petitioners

Versus

Smt Pramila Arjun Pekhale & Ors. ...Respondents

Shri M.M.Sathaye for the Petitioners.
Shri Haridas for the Respondent Nos.1 and 2.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 19, 2007.

JUDGMENT:

1. On 03rd March, 2004 this Court has issued notice for final disposal of the Writ Petition at the stage of admission. The challenge in this Petition under Article 227 of the Constitution of India is to the order dated 06th October, 2003 passed by the learned District Judge, Nasik by which Application for condonation of delay made by the Petitioners in preferring an Appeal against the decree passed in the suit filed by the first and second Respondents has been rejected. The delay was of 166 days.

2. The learned Advocate for the Petitioners has invited my attention to the averments made in the Application for condonation of delay. He has also referred to the evidence of the sixth Petitioner who was examined as a witness. He submitted that the

Petitioners had entrusted the papers to an Advocate for preferring the Appeal and the said Advocate failed to file the Appeal. He, therefore, submitted that a liberal approach ought to have been adopted by the learned Additional District Judge. The learned Advocate for the first and second Respondents opposed the Petition by pointing out that the ground made out in the application was false and it was nothing but an attempt to shift the blame on the Advocate. He, therefore, submitted that the learned Additional District Judge was right in rejecting the Application by holding that there was no sufficient cause. Though the third Respondent is represented by an Advocate, none appears for the third Respondent.

3. The second Petitioner was examined on behalf of the Petitioners. He filed an affidavit of examination-in-chief. He has made out a case that the Petitioners had engaged an Advocate. According to his case, an amount towards the fees and expenses was paid to the said Advocate and even vakalatnama was given to the said Advocate. He has stated that after making enquiry it was learnt that the said Advocate did not file the Appeal. He was cross-examined by the Advocate appearing for the first and second Respondents. In the cross-examination, he has even disclosed the amount paid

to the said Advocate. The learned Additional District Judge has found fault with the Petitioners for not examining the Advocate who was allegedly engaged by the Petitioners. Looking to the allegations made by the Petitioners against the said Advocate it was not expected of the Petitioners to examine the said Advocate as their witness. Considering the nature of the averments made in the Application for condonation of delay, the learned Additional District Judge ought to have adopted a liberal approach and condoned the delay of 166 days in filing a substantive Appeal. It cannot be ignored that an occasion for applying for the condonation of delay arises invariably when there is some default on the part of a litigant and that is the reason why a liberal approach is contemplated while dealing with the Applications for condonation of delay. In my view, the Application for condonation of delay in this case deserves to be allowed subject to payment of costs of Rs.3,000/- to the first and second Respondents.

4. Hence, I pass the following order:

(i) The impugned judgment and order dated 06th October, 2003 is quashed and set aside and Civil Misc. Application No.151 of 2000 is allowed subject to the Petitioner paying costs of

Rs.3,000/- to the first and second Respondents within a period of six weeks from today. Deposit of the amount of costs with the Appellate Court within the stipulated time will be treated as a sufficient compliance.

(ii) If compliance is not made as regards direction of payment of costs within stipulated time, the impugned order will stand.

(iii) If compliance is made, the District Court will proceed to number the Appeal.

(iv) To avoid any prejudice to original Plaintiffs the Appellate Court will decide the Appeal as expeditiously as possible and preferably on or before 31st December, 2007.

(v) Writ Petition is allowed in above terms.

(vi) Writ to be sent immediately.

JUDGE